

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LINNIELL PHIPPS,

Plaintiff,

v.

RICHARD MORGAN, et al.,

Defendants.

NO. CV-04-5108-MWL

ORDER ADOPTING REPORT AND
RECOMMENDATION

Magistrate Judge Leavitt filed a report and recommendation on January 13, 2006, recommending that Defendants' motion for Summary Judgment be granted, Defendants be awarded summary judgment on all claims set forth in Plaintiff's amended complaint, and Plaintiff's case be dismissed with prejudice. (Ct. Rec. 89).

The report and recommendation permitted Plaintiff ten (10) days, following service thereof, to file written objections to the report and recommendation. (Ct. Rec. 89). However, on January 26, 2006, the Court was informed that the report and recommendation was returned as not deliverable to Plaintiff. (Ct. Rec. 90). On January 30, 2006, Plaintiff informed the Court that his address had been changed. (Ct. Rec. 91). Therefore, on January 30, 2006, the Court ordered that the previously set date for the filing of objections to the report and recommendation be

1 vacated and that the parties be allowed additional time, through,
2 February 17, 2006, to file written objections to the report and
3 recommendation. (Ct. Rec. 92).

4 On February 17, 2006, Plaintiff filed an objection to the
5 report and recommendation. (Ct. Rec. 96). On February 28, 2006,
6 Defendants filed a response to Plaintiff's objections. (Ct. Rec.
7 100).

8 A. First Amendment Claim

9 In a claim arising under the First Amendment's Free Exercise
10 Clause, an inmate must first satisfy two criteria: 1) the
11 religious belief is sincerely held and 2) the claim must be rooted
12 in religious belief. *Malik v. Brown*, 16 F.3d 330 (9th Cir. 1994).
13 If these prerequisites are established, then the reasonableness of
14 a prison policy is determined pursuant to the four factors
15 articulated in *Turner v. Safley*, 482 U.S. 78 (1987).¹

16 The Magistrate Judge properly concluded that Defendants
17 failed to provide the Court with any reason to doubt that
18 Plaintiff sincerely believed that his religion required him to eat
19 Halal meat, a tenet he believed was central to his religious
20 beliefs. (Ct. Rec. 89, p. 8). Therefore, the Magistrate Judge
21 then discussed the *Turner* factors finding that the Defendants'
22 failure to provide Halal meat to Plaintiff was reasonable.

23
24 ¹The *Turner* case sets forth the following four factors to be
25 considered in determining when a regulation is reasonably related
26 to legitimate penological interests: 1) There must be a valid,
27 rational connection between the prison regulation and the asserted
28 legitimate governmental interest; 2) whether there are alternative
means of exercising the right available to prison inmates; 3) the
impact the accommodation of the asserted constitutional right will
have on guards and other inmates and on the allocation of prison
resources generally; and 4) exploration of the absence of ready
alternatives to the regulation. 482 U.S. at 89-91.

1 Despite Plaintiff's objections, the Magistrate Judge
2 appropriately analyzed the *Turner* factors in this case. The
3 Department of Corrections ("DOC") has a legitimate interest in
4 reducing its costs, streamlining its food production, limiting the
5 number of required staff, maintaining consolidation of its
6 vendors, and preventing security risks. Islamic law does not
7 require the eating of meat as a condition of being a Muslim, and
8 the ovo-lacto vegetarian meals adequately accommodate Plaintiff's
9 religious dietary requirements at the lowest cost to the DOC.
10 Although Plaintiff has directed the Court to passages from the
11 Quran, none of the quotations actually mandate the eating of meat.

12 As determined by the Magistrate Judge, the current program of
13 providing Muslim inmates with ovo-lacto vegetarian meals is an
14 adequate alternative to providing Halal meals. By providing ovo-
15 lacto vegetarian meals, the DOC is able to meet Muslim religious
16 requirements and not incur the burdens of a complicated food
17 service, demands for additional staffing, potential increased
18 security threats and increased costs.

19 The undersigned finds that the Magistrate Judge properly
20 concluded that Defendants' failure to provide Halal meals to
21 Muslim inmates is reasonably related to legitimate penological
22 interests and, accordingly, Plaintiff's right to the free exercise
23 of his religion was not violated by Defendants.

24 B. RLUIPA

25 The Religious Land Use and Institutionalized Persons Act of
26 2000 ("RLUIPA") provides:

27 No government shall impose a substantial burden on the
28 religious exercise of a person residing in or confined
to an institution. . . , even if the burden results from
a rule of general applicability, unless the government

1 demonstrates that imposition of the burden on that
2 person-
3 (1) is in furtherance of a compelling government
4 interest; and
5 (2) is the least restrictive means of furthering that
6 compelling government interest.

7 42 U.S.C. § 2000cc-1.

8 The Magistrate Judge appropriately found that Defendants
9 established a compelling justification for the denial of Halal
10 meals to Plaintiff under RLUIPA, i.e., reducing costs,
11 streamlining food production, limiting the number of required
12 staff, maintaining consolidation of vendors, and limiting security
13 risks. (Ct. Rec. 89, pp. 14-15). The Magistrate Judge also
14 properly concluded that providing ovo-lacto vegetarian meals, the
15 dietary program currently available to Plaintiff, was the least
16 restrictive means of furthering that compelling interest. (*Id.*)
17 The undersigned thus finds, in accord with the report and
18 recommendation, that Defendants are entitled to summary judgment
19 on Plaintiff's RLUIPA claim.

20 C. Equal Protection Claim

21 Equal protection claims arise when a charge is made that
22 similarly situated individuals are treated differently without a
23 rational relationship to a legitimate state purpose. *San Antonio*
24 *School District v. Rodriguez*, 411 U.S. 1, 67 (1972). In order to
25 state a § 1983 claim based on a violation of the Equal Protection
26 Clause of the Fourteenth Amendment, a plaintiff must show that
27 defendants acted with intentional discrimination against plaintiff
28 or against a class of inmates which included plaintiff. *Reese v.*
Jefferson Sch. Dist. No. 14J, 208 F.3d 736, 740 (9th Cir. 2000).

1 To prevail on this equal protection claim, Plaintiff must prove
2 that a discriminatory intent was a motivating factor in the
3 decision not to provide Halal meat to Plaintiff and that
4 Defendants also failed to satisfy the *Turner* reasonable
5 relationship test. *Salaam v. Collins*, 830 F.Supp. 853, 859 (D.
6 Md. 1993); *Abdullah v. Fard*, 974 F.Supp. 1112, 1119 (N.D. Ohio
7 1997).

8 The Magistrate Judge correctly found that Plaintiff failed to
9 allege a discriminatory purpose behind DOC's policy of providing
10 ovo-lacto vegetarian meals to Muslim inmates to accommodate their
11 religious beliefs. (Ct. Rec. 89, p. 16). As determined by the
12 Magistrate Judge, even if a discriminatory purpose was shown,
13 Defendants' dietary program pertaining to Muslim inmates still met
14 the *Turner* reasonable relationship test. Accordingly, the
15 undersigned finds, in accord with the report and recommendation,
16 that Defendants are entitled to summary judgment with respect to
17 Plaintiff's equal protection claim as well.

18 D. Conclusion

19 Having reviewed the report and recommendation (Ct. Rec. 89),
20 Plaintiff's objections to the report and recommendation (Ct. Rec.
21 96), and Defendants' response (Ct. Rec. 100), said report and
22 recommendation is **ADOPTED** in its entirety.

23 **IT IS HEREBY ORDERED** that Defendants' motion for summary
24 judgment (**Ct. Rec. 48**) is **GRANTED**, Defendants are awarded summary

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1 judgment on all of the claims set forth in Plaintiff's amended
2 complaint (Ct. Rec. 33), and Plaintiff's case is **DISMISSED WITH**
3 **PREJUDICE.**

4 **IT IS SO ORDERED.** The District Court Executive shall enter
5 this order, enter **JUDGMENT** in favor of the Defendants, forward
6 a copies to Plaintiff and counsel, and **CLOSE THE FILE.**

7 **DATED** this 6th day of March, 2006.

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9 ***s/Lonny R. Suko***

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11 LONNY R. SUKO
12 UNITED STATES DISTRICT JUDGE
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